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**APR 02 2008**

**OFFICE OF PETITIONS**

In re Application of	:	
Becker et al.	:	DECISION ON PETITION TO
Application Number: 10/674979	:	WITHDRAW HOLDING OF
Filing Date: 09/30/2003	:	ABANDONMENT
Attorney Docket Number:	:	
AUS920030623US1	:	

This is a decision on the petition filed on February 20, 2008, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit a response to the non-final Office action mailed on July 27, 2007, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on February 7, 2008.

Petitioner asserts that the non-final Office action mailed on July 27, 2007, was never received.

In the absence of any irregularity in the mailing of the non-final Office action mailed on July 27, 2007, there is a strong presumption that the non-final Office action mailed on July 27, 2007, was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the non-final Office action mailed on July 27, 2007, was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received"

1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the non-final Office action mailed on July 27, 2007, was properly mailed to petitioner at the correspondence address of record at the time of mailing. Thus, there was no irregularity in the mailing of the non-final Office action mailed on July 27, 2007, on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioners' counsel, registered patent practitioner Duke W. Yee, asserts that a search of the file jacket and docket records indicates that the non-final Office action mailed on July 27, 2007, was not received. A copy of the docket record where the non-final Office action mailed on July 27, 2007 would have been entered had it been received have been provided and has been referenced in the practitioner's statement.

The petitioner has made a sufficient showing of nonreceipt of the non-final Office action mailed on July 27, 2007. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file is being referred to Technology Center Art Unit 2155 for remailing of the non-final Office action mailed on July 27, 2007. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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